

EXHIBIT E to
Document # 72

1

Case No.1:08-CV-509-LTS-RHW

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

BETWEEN:

{"MARION S. LEBON and LISA COWAND
Plaintffs

vs.

State Farm & Casualty Company
Defendants

Deposition of
Curtis Hilgerson

APPEARANCES

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Taken before Kathryn E. Vail, Official Court Reporter, at
13011 Lakeshore Drive, Summerland, British Columbia, on the 15th
of October, 2009.

1 detail about the claims and the particular files that I
2 have brought with me today.

3 A Okay.

4 Q So, if you don't mind, I really am not trying to pry or
5 anything, but it's all relevant information.

6 Do you have any family in Mississippi?

7 A No.

8 Q How is it that you came to work claims in Mississippi?

9 A I was hired by Pilot Catastrophe Services through one of
10 the managers named Mark Ward, who lives in Summerland.

11 Q Okay. How long has Mark Ward worked with Pilot?

12 A I don't know.

13 Q And so how long have you worked with Pilot?

14 A Five years.

15 Q And today you still work with Pilot?

16 A Correct.

17 Q Looking over the Subpoena that asks for certain documents,
18 let me ask you, do you keep a personal claim file when you
19 adjust claims?

20 A No.

21 Q Do you use a laptop?

22 A Provided by State Farm.

23 Q Okay. And now is that laptop checked out to you for a
24 specific assignment and then returned?

25 A Yes.

1 Q Okay. The laptop is preloaded with software?

2 A Correct.

3 Q Is there -- on the laptop hard drive itself, is there a
4 place where you would have a file on the C-drive that you
5 would put your documents into while you are out in the
6 field?

7 A Not to my knowledge. The files stay within the estimating
8 system or the system where you put your log notes, which
9 is all connected to State Farm's internal system.

10 Q Okay. So, after doing some work within the program -- let
11 me go ahead and ask you is the program you are speaking of
12 is that Xactimate?

13 A Yes.

14 Q So you are working within the Xactimate program, it all
15 just kind of stays within the program, you log on to the
16 internet and you are then connected to a shared server?

17 A For your log notes, correct. Yes.

18 Q Do you have any paper files you keep?

19 A Only for State Farm.

20 Q And when you mean, for State Farm you have like a manila
21 folder?

22 A If you are working flood claims you have a paper file.

23 Q Okay.

24 A But in my experience everything we have done so far is all
25 electronic.

1 Q What kind of reports would you send to your team manager
2 regarding your investigation, estimation and evaluation of
3 these claims? Did you have telephone reporting, where you
4 would check in periodically or did you just finish the
5 reports and send the final in?

6 A Normally if I didn't have any questions, I would finish my
7 estimate, upload all my log notes concerning what I saw,
8 any and all documents provided by the policy holder,
9 photographs were uploaded, and submit that for review with
10 my recommendations whether it be payment or denial.

11 If I had questions I would call them first before I
12 submitted it to them.

13 Q Okay. Is there a specific site that you went to, to upload
14 your files?

15 A Well Xactimate uploads to a specific server. And on the
16 State Farm system where we file our log notes system and
17 that is also where we upload the photographs, that is all
18 within the State Farm system.

19 Q So do they give you a user ID and a log on?

20 A Yes. I believe we also printed off a copy of the estimate
21 so that they could review it, and if there is any changes
22 needed they would put red marks on it and give it back to
23 you for anything that is done on the file.

24 Q If you had like handwritten notes how would you, did you
25 scan those and then upload them?

1 A Yes.

2 Q And date 10/19/05 would be log entry No. 7. It looks like
3 an entry made by you; is that correct?

4 A Correct.

5 Q It looks like there is another one prior to that No. 6.

6 A M'hm.

7 Q And another one dated 10/10. Okay. On 10/10, go ahead and
8 read that entry No. 5 dated 10/10 that you put in.

9 A Inspected risk with Mrs. Policy Holder. Only the slab
10 remains. Measured footprint and obtained information
11 regarding contents from Mrs. Policy Holder, took photos of
12 the risk and surrounding area.

13 Q Okay. That says you inspected on 10/10/05. The other
14 document we read had the inspection date of 10/15. And
15 you said that is the day you would have met with the
16 policy holder.

17 A This is probably a more accurate date.

18 Q Okay.

19 A The 10/10, the enter date in the estimate that we were
20 looking at and then inspection date was 10/15, I probably
21 just didn't change it, either that or I had to go out
22 there and again and confirm things.

23 Q Okay.

24 A But the activity log we do that day.

25 Q So. And do you see the entry below it 9/25/05 Ida

1 limits for coverage A and B. Draft authority requested
2 for \$100,000 coverage A and \$40,000 coverage B. Reviewed
3 ICC with policy holder and she requested that no brochure
4 be sent that she was well versed on the subject. File
5 submitted for review and settlement. Enclosure.

6 Q And the next thing you did was submitted to Jody Prince as
7 noted in the log there at 10/21/05?

8 A Correct.

9 Q Okay. On page 69 -- actually it starts on 67. There is a
10 section in the activity log called "documented changes".
11 Okay.

12 A M'hm.

13 Q So under that "documented changes" it continues for a
14 couple of pages. And on page -- let's see here it is on
15 page 70. It shows some documented changes made by you on
16 10/10, entry No. 7 it says you changed the date from
17 9/15/05 to 10/10/05, do you recall why?

18 A I need the file to reflect the date that I inspected it not
19 the date of whoever had the file before me.

20 Q Okay.

21 A And then they also changed the "inspected by" to my alias
22 instead of whoever had it before me.

23 Q M'hm.

24 A The same as the contact dates and who contacted.

25 Q Did you actually make these changes or did somebody else?

1 A That should have been me making the changes.

2 Q Okayy. So you went through and changed contact dates and
3 inspection dates?

4 A Correct.

5 Q And it was from entries before? They had -- let me ask you
6 again. The date 9/15/05 inspection date was assigned to
7 you originally? This date of inspection they they had it
8 under your name?

9 A 9/15 would not have been my date. Somebody else would have
10 entered that date in there, whoever had the file before
11 me.

12 Q M'hm.

13 A And from a review of the documents it looks like that Ida
14 had the file before me; that's her inspection date, that's
15 her contact date, I would guess. A lot of times we would
16 get a file that's already been contacted, but when we
17 speak to the policy holder we need to change that date to
18 our date and our alias, so that whoenever is reviewing
19 file can see when they do the report it shows when we've
20 contacted the people.

21 Q Okay. So from these changes there was an inspection date
22 by someone else identified as G2BZ on 9/15/06?

23 A '05.

24 Q '05, I'm sorry.

25 A That's what it looks like from the documents, yes.

1 Q And then that same, that other contact was changed from the
2 date was BSGQ?

3 A Right.

4 Q All right. Do you have any idea who G2BZ is?

5 A No.

6 Q BSGQ?

7 A No.

8 Q Okay. You just know those were inspection dates and
9 contact dates that you didn't perform?

10 A Right.

11 Q So, why would you change that? Why would that not just be
12 represented on it's own that so-and-so contacted on those
13 dates and inspected on those dates; and then you came in
14 and did your inspections and contacts a month later?

15 Mr. Tucker: Object to the form.

16 A There is only one spot, there is only one date available.
17 So we need the file to reflect our contact dates and our
18 inspection dates when we are reviewed by management. I
19 believe that's why they put in the changes so you can see
20 who had it before and what happened. But I didn't make
21 the program, there is only one line, one date available.
22 When we get the file we are instructed to update that to
23 our contact and our inspection. Because when they pull
24 the reports if we didn't change the contact date it would
25 show we contact the person yet. And then we would be

1 contacted by management saying, you need to contact these
2 people.

3 Ms. Trotter:

4 Q But it's an activity log by date?

5 A Right.

6 Q Wouldn't you expect every date to have an entry of action
7 -- that had action?

8 Mr. Tucker: Object to the form of the question.

9 A Well in the log itself --

10 Ms. Trotter:

11 Q Okay. Look back to page 61 --

12 A -- there is --

13 Q -- the activity log around that time where you are changing
14 dates from 9/16 to 9/15. There's no activity log entry
15 that shows Ida inspected on 9/15 or contacted anyone on
16 9/16.

17 A There is. There is one right there. 9/25/05 Ida
18 McCallister inspected risk 9/15/05.

19 Q M'hm, on 9/25?

20 A Right. So that's when she entered it.

21 Q And then your entry comes in on 10/10, inspected risk with
22 Mrs. Policy Holder --

23 A M'hm. It looks like Ida's date is entered ten days after
24 she actually inspected it according to her notes, but.

25 Q Prior to the risk being assigned to you, prior to your risk

1 assignment?

2 A Yes.

3 Q So the documented changes on those dates misrepresent the
4 claim file as far as the activity log goes, wouldn't you
5 say?

6 Mr. Tucker: I object to the form of the question.

7 A I honestly don't understand.

8 Ms. Trotter:

9 Q If the activity log is a log of every activity by date,
10 documented changes should coincide with the activities in
11 the log, right?

12 Mr. Tucker: Object to the form of the question.

13 A I'm not sure to be honest.

14 Ms. Trotter:

15 Q If you look on page 70 --

16 A Yeah.

17 Q -- there is just a whole section missing there?

18 A 10/10/05, is when I changed it.

19 Mr. Tucker: Same objection.

20 A I can't comment on as to what happened before. When I got
21 the file I changed my dates and I took it from there. I
22 don't know what happened prior to me getting the file
23 assigned to me.

24 Ms. Trotter:

25 Q Okay.

1 A All right.

2 Mr. Tucker: You need a 30(B)(6) witness to discuss these topics.

3 We will be happy to provide one.

4 Ms. Trotter: Okay.

5 Mr. Tucker: You sign a notice, and we'll get you a witness.

6 Ms. Trotter: I guess we'll have to do that. You have to

7 understand the files.

8 Mr. Tucker: I hear you.

9 Ms. Trotter:

10 Q Let's move onto the homeowners' club file. And it's

11 labeled 24-z504-786(FL) Lebon 10001 through 94. You

12 inspected the house and the cottage at the same time; is

13 that right?

14 A From my recollection, yes.

15 Q Here is a copy for you to flip through. I hate to do this,

16 but we are going to attach the cottage flood file as

17 Exhibit 3.

18

19 (Exhibit - 3 for the Plaintiff: 24-z504-793(FL) Lebon

20 100001 -100086)

21

22 Ms. Trotter:

23 Q Okay. On page 5 it looks like another reserve final

24 payment information worksheet; is that your handwriting?

25 A Yes.

1 estimate to State Farm?

2 A Not to my recollection.

3 Q Okay. If you go to page 63 in the file there is a page
4 where log notes are entered by you in the activity log.
5 They appear to be the same log notes that we looked at in
6 the previous flood file for the cottage. Will you look
7 those over and tell me if you agree?

8 A Yeah, they look similar. Do you want me to identify --

9 Q Do you want to compare? Let me see Exhibit 3, please and
10 see if there are any added or different ones?

11 A Yeah. It looks like I used one as a template because the
12 information was similar and I had forgotten to change the
13 amounts for the draft authority. And so on the next log
14 there is an edit to change those logs.

15 Q Okay. Does that tell you that you did the cottage first?

16 A (Witness shakes head).

17 Q No?

18 A That's what it looks like. I can't tell you 100% to be
19 honest. I may have done this one first and pasted it over
20 and saw the error. From what it looks like I might have
21 done the cottage first and saved the log as a paste to
22 save some time because the information is identical, but I
23 forgot to change the draft authority amounts.

24 Q But you wouldn't go back into the other activity log and
25 make a documented change, you would just add the

1 information to the next log; is that right?

2 A You can't go back and change it. Once you have saved it,
3 once you hit enter you can't touch it. So that is why I
4 couldn't go back and edit this one, I had to add a new log
5 to say there was an error to the amounts and this is what
6 it should reflect.

7 Q Okay. The document change feature you couldn't use that
8 for a situation like this?

9 Mr. Tucker: Object to the form.

10 A We don't -- sorry.

11 Mr. Tucker: Go ahead.

12 A We don't use that.

13 Ms. Trotter:

14 Q You just added another entry that you had added previously?
15

16 A Correct.

17 Ms. Trotter: Okay. That is it for the flood file then. Thank
18 you. We'll go ahead and attach that as Exhibit 4.

19

20 (Exhibit - 4 for the Plaintiff: 24-z504-786(FL) Lebon
21 100001 - 100094)
22

23 Ms. Trotter: We are ready to go back on the record.

24 Ms. Trotter: All right. We have already gone through the two
25 flood files, the one for the home and the other for the

1 Q Seventy seven and 78?

2 A Are there colour pictures we can look at?

3 Mr. Tucker: My recollection is you are only going to find those
4 black and whites.

5 Ms. Trotter: So we don't have a better colour photo.

6 Mr. Tucker: They were provided by the insured during the
7 arbitration-mediation process.

8 Ms. Trotter: Okay.

9 Mr. Tucker: They are labeled by the insured as well. I believe
10 there is a cover letter at some point.

11 Ms. Trotter: I recognize them as the photos. I will flip
12 through this fax set that's been in here three times to
13 see if they had tried to fax them in. Maybe that's why
14 they look so rough.

15 Mr. Tucker: Can we go of the record for a second?

16

17 [Off the Record]

18

19 Ms. Trotter: We're back on the record.

20 Ms. Trotter:

21 Q We are going to have to look at these. They are not the
22 best shots, but they are photos. Okay. And they were
23 submitted, I'll represent to you, by the policy holder at
24 a later time. They are photographs that were taken the
25 day after the storm. And she's got notations, the policy

1 holder has notations on them "location of the house".

2 A Right.

3 Q Now in these photos there is a series of trees that are
4 broken and snapped. Could these be some of the ones that
5 you were representing broken to approximately 10 to 15
6 feet when you went out?

7 A I would imagine, yes.

8 Q Okay. And, the foundation of the home, if you look at page
9 78, you can see it just inside the broken trees here. Do
10 you see like the little chain wall and concrete and brick
11 and the chain wall there?

12 A Yes.

13 Q That is the location of the home and those are like the two
14 photographs that the policy holder submitted?

15 A Okay.

16 Q Now let's look at the photographs that are taken on
17 10/19/05 starting on page 79, 80, 81, 82. Eighty-three is
18 not marked. So these four, 79 through 82 that are date
19 stamped 10/19, did you take those photographs?

20 A I'm not 100 percent sure, but like I said, the file was in
21 my possession, so I would imagine, yes. It's possible.

22 Q It looks like in photo 79 that a couple of trees have
23 probably already have been removed. And you can see some
24 debris of cut trees down by the street?

25 A Yes.

1 Q Do you recall on your site visit whether the property had
2 been cleared of the debris?

3 A I don't believe so. I don't remember any specific trees,
4 but, like I said, it is possible.

5 Q And photograph No. 80, just beside the chairs it looks like
6 there is more trees that are cut up and ready to be hauled
7 down, do you see that?

8 A Yeah. If you look at 83 that is the vehicle that I was
9 using.

10 Q Eighty-three. So that's the next set.

11 A That's a photo taken on 10/10 and there is the same tree
12 cap right here.

13 Q So it looks like some of the trees had already been in the
14 process of being removed from the property when you got
15 there?

16 A Quite possibly, yeah.

17 Q Is there a date stamp on 83 where you noted it was 10/10?

18 A No.

19 Q Or that is when you recall that being the visit on 10/10?

20 A Well I know that was the vehicle I rented --

21 Q Oh, okay.

22 A -- for riding around town.

23 Q Oh, okay. So you are certain 10/10 you went out and did an
24 inspection on the property?

25 A Yes.

1 Q 10/19 you are not sure?

2 A I am not 100 percent. I normally would have made a log
3 note to that effect.

4 Q Uncertain that is 10/19. And the 10 photos from 83 to 85,
5 86 and 87. There is only five photos here from 10/10?

6 A Okay.

7 Q The one you note your vehicle and the trees that look like
8 they have already been cut down.

9 A M'hm.

10 Q Okay. 10/10, the storm was August 29th, what in this
11 photograph is important to your determination that the
12 storm surge caused the damage to this property?

13 A Location of the property to the Bay of St. Louis, the
14 proximity to the water.

15 Q M'hm. Anything else?

16 A Um, the fact that all of the power lines, and such, are
17 still in tact.

18 Q Do you know, for a fact, that those are still in tact and
19 not restrung?

20 A I don't know with 100% certainty, no.

21 Q Page 84. I know we looked at this in one of the other
22 files, but it's been too long now. Is that a picture of
23 the cottage or the house?

24 A That looks to be the house.

25 Q Okay. And in that picture do you see any evidence of wind

1 Q Okay. Now the tree that is laid on it's side just in front
2 of the truck, it looks like it's falling between those two
3 trees that you just pointed out?

4 A Right.

5 Q And then the tree to the left, leaning basically in that
6 direction, what do those two trees represent to you?

7 A Obviously damage from the storm. I mean it's possible that
8 the tidal surge softened up the root ball and the tree got
9 pushed over with the tidal surge. It could be the tidal
10 surge or debris from the house could have pushed the upper
11 tree over or broke it off. I can't see what the cause of
12 the damage is from this picture.

13 Q So you been pointed out there's only a handful of pictures
14 here, five; right? So if you saw something like that, and
15 you did, you took a picture of it, wouldn't you go further
16 and investigate that to see exactly where that tree is
17 broken?

18 A Well if I walk in -- I walked all around the property. I
19 mean I took as many photos as I thought would indicate the
20 general damage to the property.

21 Q So you think five photos represents the general damage to
22 the property?

23 Mr. Tucker: Object to the form. Argumentative.

24 Ms. Trotter: I want to know, five photographs is that
25 representative of the property?

1 Mr. Tucker: Is this again from both dates?

2 Ms. Trotter: This is from 10/10.

3 Mr. Tucker: The claim file contains more than five, doesn't it?

4

5 Ms. Trotter: There are some that say 10/19, but he was even
6 certain whether he took those photographs or made that
7 visit. So I'm asking him about the 10/10 photographs.
8 And there are five here.

9 Mr. Tucker: Let's be clear what you are talking about.

10 Ms. Trotter: There's five photographs here from his inspection
11 that he knows he took.

12 Mr. Tucker: Okay.

13 Ms. Trotter: He only took five photographs; is that what I'm to
14 understand?

15 Mr. Tucker: I'm going to object to the form.

16 Ms. Trotter:

17 A I took five photographs on 10/10, and it's possible that I
18 took the photographs on 10/19, I'm not certain. Whatever
19 photographs I took on that date I felt represented damage
20 to the property. I took photos for flood damage and there
21 were three different claims on this property.

22 Ms. Trotter:

23 Q And some of the photos that are in the homeowners' file are
24 also in the flood file; is that right?

25 A It could be. I'm not sure. We'll have to look at them.

1 Q Let's see what we have got here. 793 is the cottage, it's
2 two photographs in this file in Exhibit 3. Do we have the
3 same photograph? Is No. 8 in Exhibit 3 the same as photo
4 No. 85?

5 A It looks the same, yes.

6 Q Okay. The other photo in the attached file is 81 and does
7 that look like photo 86 in the homeowners' file?

8 A Yes, it does.

9 Q Okay. So would it be fair to say those two pictures in the
10 flood file Exhibit No. 3 are also included in the
11 homeowners' file.

12

13 A Yes.

14

15 [Off the Record]

16

17 Ms. Trotter: We're back on.

18 Ms. Trotter:

19 Q In the flood file for the home, Exhibit No. 4, there are
20 two photographs one on page 35; is that the same
21 photograph as in the homeowners' file No. 84?

22 A Yes, that looks the same.

23 Q Okay. Now, in Exhibit 3 the flood file for the home there
24 is another photograph, No. 36 that you already testified
25 to as a picture of the gazebo; is that right?

1 A Yes.

2 Q That's not one of the last two of the five in the
3 homeowners' file that we just reviewed? That would be an
4 additional photo that's not included in the homeowners'
5 file; would you agree?

6 A True.

7 Q Now the two photos that I do have here, photo 83 from the
8 10/10 inspection date, is a picture of your vehicle taken
9 from the property towards the water. You testified that
10 was to show the distance or the proximity of the home to
11 the water?

12 A Yes.

13 Q The other photograph in the homeowners' file the last of
14 the file on 10/10 is No. 87, did you tell me you knew
15 exactly where that was or not on the property?

16 A Um, I'm not 100 percent. It looks like it's facing west.

17 Q Okay. Now my question to you was, did you take only five
18 photographs on 10/10?

19 A Yes.

20 Q Okay.

21 A Well maybe six.

22 Q Well maybe six. Okay. So my follow up question is having
23 looked at the two photographs, the two photographs
24 submitted by the Plaintiffs of the property where the
25 house was located in the homeowners' file do you have any

1 pictures of where the house was located?

2 Mr. Tucker: Object to the form of the question.

3 Ms. Trotter:

4 Q I mean I didn't see those. I mean did you take pictures of
5 where the house was? Maybe they just didn't get uploaded.

6 Mr. Tucker: I think he has identified at least three times that
7 that photograph shows what he believes to be the slab for
8 the residence, the main dwelling.

9 A Page 84.

10 Ms. Trotter:

11 Q Okay. So page 84 is the picture for the dwelling?

12 A That's what I believed to be the dwelling, yes. And page
13 86 is, I believe, the cottage foundation, the overview,
14 but I'm not 100 percent sure of that.

15 Mr. Tucker: For the record, if the plaintiff's have any colour
16 copies of photographs that they have not produced in this
17 matter, it's high time that we get those in to discovery.
18 I think the two you have in your hand are probably not
19 able to be produced in any more legible fashion than what
20 you have represented to the witness today.

21 Ms. Trotter: To clarify for the record, they have been produced
22 to State Farm several times over. They are also in expert
23 reports.

24 Mr. Tucker: Are you saying that you produced in this litigation
25 colour, legible copies?

1 Ms. Trotter: Absolutely.

2 Mr. Tucker: Can we not refer to those as opposed to these?

3 Ms. Trotter: Well this is what you've provided in the
4 homeowners' file.

5 Mr. Tucker: Well that's because I thought it was presented to
6 us by AAA when they had their mediation claim. But if you
7 have clear copies that would be the thing to look at today
8 as opposed to these facsimile versions.

9 Ms. Trotter: Well, you know, if you would have a complete
10 homeowners' file here.

11 Mr. Tucker: I'm sorry, we do. I object the suggestion that the
12 facsimile copy provided to AAA somehow compromised the
13 validity of the homeowners' file. That's just silly.

14 Ms. Trotter: Those are there.

15 Ms. Trotter:

16 Q Let's see, you have in your homeowners' file a fax
17 received, new mail received actually, June 27th that
18 includes those photographs.

19 Mr. Tucker: A fax. Exactly. My request is for clear colour
20 copies.

21 Ms. Trotter: They're not here. You have clear color copies.

22 My question involves the investigation of the property and
23 why five pictures --

24 A Six.

25 Ms. Trotter: -- six pictures were sufficient or if really there

1 may have been some photos uploaded that weren't produced.

2 So that's my question.

3 Ms. Trotter:

4 Q Is it possible that you uploaded photos that were not
5 produced?

6 Mr. Tucker: Object to the form of the question. Calls for
7 speculation.

8 A No.

9 Ms. Trotter:

10 Q So you are absolutely sure you only took six photographs of
11 this property?

12 Mr. Tucker: Same objection.

13 A I uploaded all of my photos in every claim that I did on
14 Katrina.

15 Mr. Tucker: You are refusing to consider the 19th, and he said
16 these are possibly his. He says he is not absolutely
17 sure.

18 Ms. Trotter:

19 Q On 10/10 did you take more than six photos?

20 A Not that I'm aware of.

21 Mr. Tucker: Object to the form of the question.

22 Ms. Trotter: Okay. If you don't mind pulling out of that stack
23 over there, starting from page 90 through 164. I will ask
24 you to -- actually wait a minute. Pull 92 out and set it
25 aside.